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April 2, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-B204
Washington, D.C. 20554

**Re: Rules and Regulations Implementing the Telephone Consumer
Protection Act of 1991, CG Docket No. 02-278**

Dear Ms. Dortch:

This letter provides notice that Robert Corn-Revere and Ronald London, counsel for the American Teleservices Association ("ATA"), along with Matt Mattingly, ATA's Director of Government Affairs, met today with Dane Snowden, Chief of the Consumer & Governmental Affairs Bureau ("CGB"); Margaret Egler, Deputy Chief (Policy) for CGB; Laurence Schecker, Attorney-Advisor in the Office of General Counsel's Administrative Law Division, and Elizabeth Lyle of the General Counsel's Office; and Erica McMahon, Gene Fullano and Richard Smith of CGB.

During the meeting, we discussed the FCC mandate under the Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), and the Further Notice of Proposed Rulemaking (FCC 03-62) issued in the proceeding. At the end of the meeting, we provided the attached handout, which summarizes ATA's recommendations to date in the proceeding and explains why those recommendations may still be adopted and are still prudent in the face of the Do-Not-Call Implementation Act.

If there are any questions regarding this matter, please contact the undersigned directly.

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Very truly yours,

Davis Wright Tremaine LLP

/s/ Ronald G. London

Ronald G. London
Counsel for ATA

cc: Dane Snowden
Margaret Egler
Laurence Schecker

ATA POLICY RECOMMENDATIONS – CG DOCKET NO. 02-278

Recommendations in ATA’s Comments and Reply Comments

- Eschew adopting a national “do-not-call” registry
- Retain company-specific “do-not-call” requirements, but with a two-year retention period
- Retain the current “established business relationship” definition and time-of-day restrictions
- Confirm exclusive FCC authority over interstate telemarketing calls and predictive dialers
- Refrain from adopting an abandoned call rate or, if a rate is adopted, nothing lower than 5%
- Place wireline and wireless subscribers on equal footing
- Extend the informal complaint rules to telemarketing complaints

ATA’s Recommendations Remain Sound in the Wake of the Do-Not-Call Implementation Act

- Congress was careful to make clear it did not intend the FCC to prejudge issues, stating that there is no intent “to dictate the outcome of the FCC’s pending rulemaking proceeding.” H.Rep. 108-8, 108th Cong., 1st Sess. 9 (Feb. 11, 2003). Congress underscored that the FCC is still “bound by the TCPA,” *id.* at 4, which necessarily includes the criteria in 47 U.S.C. §§ 227(c)(1) & (c)(4) which must be satisfied before adopting any rule. Congress also recognized that “it is impossible for the FCC to adopt rules identical to the FCC’s TSR.” *Id.* Any prejudgment would run afoul of *ACT v. FCC II*, 932 F.2d 1504 (D.C. Cir. 1991).
- ATA’s recommendations are consistent with the Do-Not-Call Implementation Act’s mandate for the FCC to “maximize consistency” with FTC amendments to the Telemarketing Sales Rule.
 - Declining to replicate the FTC’s “do-not-call” registry is not inconsistent with and does not impair or confuse the operation of the FTC registry. It would preserve the constitutional balance embodied by Section 227(c)(1) and maintain the equilibrium between individual privacy rights and legitimate telemarketing activities struck by company-specific lists.
 - Retaining company-specific lists, established business relationships, and the time-of-day restrictions is wholly consistent with corresponding provisions in the FTC’s rules.
 - Asserting exclusive jurisdiction over interstate telemarketing calls is consistent with the FTC’s distinction between interstate and intrastate telemarketing calls.
 - Asserting exclusive FCC jurisdiction over predictive dialers is mandated by 47 U.S.C. § 153(14), and *Telerent Leasing Corp.*, 45 F.C.C.2d 204 (1974), and *North Carolina Util. Comm’n. v. FCC*, 537 F.2d 787 (4th Cir. 1976), and their progeny.
 - As the expert agency, FCC rules should exclusively govern the operation of telecommunications equipment.
 - The FTC stayed its predictive dialer rules, first partially then in full, due to problems experienced by the industry in trying to comply with them.
 - Applying rules to wireline and wireless carriers equally parallels FTC statements that its rules apply to any call placed to a customer, whether to a residential telephone number or to the customer’s cellular telephone or pager.